

Kerry S. Culpepper, HI Bar No. 9837, *pro hac vice*
Culpepper IP, LLC
75-170 Hualalai Road, Suite B204
Kailua Kona, HI 96740
Tel: 808-464-4047
Fax: 202-204-5181
kculpepper@culpepperip.com

Jonah A. Grossbardt (State Bar No. 283584)
SRIPLAW
8730 Wilshire Boulevard
Suite 350
Beverly Hills, California 90211
Tel: (323) 364-6565
jonah.grossbardt@sriplaw.com
Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Originating Case: *After II Movie LLC., et al., v. Grande Communications Networks LLC*, No. 1:21-cv-709 (W.D.TX)

In re Subpoena to:

Reddit, Inc.

Case No.: 3:23-mc-80037-LB
Hearing Date: July 27, 2023
Time: 9:30 AM
Place: Zoom

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION TO COMPEL NON-PARTY
REDDIT TO RESPOND TO SUBPOENA**

**PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION TO COMPEL NON-PARTY
REDDIT TO RESPOND TO SUBPOENA**

Plaintiffs AFTER II MOVIE, LLC, BODYGUARD PRODUCTIONS, INC., HITMAN 2 PRODUCTIONS, INC., LHF PRODUCTIONS, INC., MILLENNIUM FUNDING, INC., MILLENNIUM IP, INC., MON, LLC, NIKOLA PRODUCTIONS, INC., OUTPOST PRODUCTIONS, INC., RAMBO V PRODUCTIONS, INC., VENICE PI, LLC, VOLTAGE HOLDINGS, LLC, WONDER ONE, LLC, DALLAS BUYERS CLUB, LLC; HANNIBAL MEDIA, INC.; BADHOUSE STUDIOS, LLC; THE GUARD PRODUCTIONS, LTD; JOLT

PRODUCTIONS, INC.; TIL PRODUCTIONS, INC.; and SCREEN MEDIA VENTURES, LLC (“Plaintiffs”), by and through their counsel, pursuant to Civ L.R. 7.3(c), file their Reply in support of their Motion for an order compelling non-party REDDIT, INC. (“Reddit”) to fully produce documents in response to Plaintiffs’ subpoena.

I. INTRODUCTION

1. Reddit’s Opposition concedes that Plaintiffs followed this Court’s guidance in *In re Reddit, Inc.* [Doc. #1-4] (“*Reddit I*”) where it applied the test of *Doe v. 2TheMart.com*, 140 F. Supp. 2d 1088 (W.D. Wash. 2001) to a similar subpoena. Reddit does not dispute that the information Plaintiffs seek is relevant to their claims. Reddit does not argue that Plaintiffs should have propounded further discovery on Defendant or that Plaintiffs failed to obtain information on pirating subscribers from Defendant. Reddit does not dispute Plaintiffs’ point that it has had limited success establishing dialogue with most of the subscribers of the 118 Internet Protocol (“IP”) addresses and that it is unlikely that they will get substantive responses from the subscribers in time to include this information in the expert reports due by Aug. 7, 2023. Rather, Reddit argues that Plaintiffs should be required to take impracticable measures of serving over one hundred subpoenas on individual subscribers. This Court’s guidance in *Reddit I* applying the *2TheMart.com* test does not require that Plaintiffs take unrealistic measures to prove that information is unavailable from other sources. The Court should grant Plaintiffs’ motion.

II. ARGUMENT

A. Reddit misapplies the 2TheMart test.

2. The *2TheMart* test has three other factors besides the fourth factor of whether “...information sufficient to establish or to disprove that claim or defense is unavailable from any

other source.” *2TheMart.com*, 140 F. Supp. 2d at 1095. Besides an argument in passing in FN 4¹, Reddit argues only the fourth factor and does not seriously dispute that Plaintiffs have satisfied three of the four factors. However, the fourth factor is not absolute. Rather, the factors are weighed “based on the circumstances of a given case.” *Reddit I* at p. 6; *see also Sines v. Kessler*, No. 18-mc-80080-JCS, 2018 U.S. Dist. LEXIS 132054, at *1 (N.D. Cal. Aug. 6, 2018) (“The standard provides a flexible framework in which the weight of each factor depends on the circumstances of the case”). The circumstances of this case weigh in favor of allowing Plaintiffs’ discovery.

3. Reddit even concedes that Plaintiffs have exhausted means by propounding discovery on Defendant and sending letters to its subscribers. Accordingly, the facts here are different from *Reddit I* where Plaintiffs served subpoenas on Reddit at the outset of discovery before propounding document discovery on the Defendant. Here, the expert deadline is in about a month and Plaintiffs have already propounded substantive document discovery on Defendant. Nonetheless, Reddit argues that Plaintiffs should be required to do even more and serve subpoenas on over 100 of Defendant’s subscribers. *See Opp.* at p. 5. To serve subpoenas on 100 subscribers is impractical. To expect to obtain admissions from the subscribers that they are drawn to use Defendant’s service for piracy before the expert deadline or discovery cut-off is unrealistic. *2TheMart.com* does not require Plaintiffs to do the impossible to show that information is unavailable. Indeed, the Supreme Court has recognized the impossibility for copyright holders to enforce rights against direct infringers when a widely shared service is used for piracy. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 929–30 (2005). On the other hand,

¹ Reddit’s argument that comments discussing torrenting does not automatically equate to copyright infringement ignores the fact that the commentators were discussing whether they got copyright notices from their torrenting. A notice would not have been sent if these commentators were torrenting legal content.

1 the Reddit users have already made comments which Plaintiffs only need authentication to use as
 2 admissible evidence. Consideration of the circumstances of this case weigh in favor of granting
 3 Plaintiffs the discovery they seek.

4 ***B. Reddit has not shown that the copyright infringement standard does not apply to xBROKEEx.***

5 4. Reddit argues that the standard of *In re DMCA § 512(h) Subpoena to Twitter, Inc.*, 608 F.
 6 Supp. 3d 868, 876 (N.D. Cal. 2022) (“*DMCA Subpoena to Twitter*”) should not be applied to
 7 xBROKEEx because: (1) Plaintiffs have not accused xBROKEEx of copyright infringement in a
 8 pleading; and (2) there is no *prima facie* case of copyright infringement because the comment was
 9 over 12 years ago. *See* Opp. at pp. 6-7.

10 5. Reddit’s first argument can easily be cast aside because even *DMCA Subpoena to Twitter*
 11 involved a DMCA subpoena which by nature does not include a pleading.

12 6. Reddit’s second argument also fails because Plaintiffs invoked the discovery rule. Reddit has
 13 not asserted any evidence of a circumstance that would have given Plaintiffs reasonable suspicion to
 14 monitor social media comments for people admitting to pirating their films. Reddit asserts without
 15 any evidence that “Plaintiffs undoubtedly knew of The Expendables being pirated at least twelve years
 16 ago. In 2011, the copyright owner for The Expendables sued over 23,000 anonymous defendants for
 17 pirating that movie. *Nu Image, Inc. v. Does*, 799 F. Supp. 2d 34 (D.D.C. 2011)”. Opp. at FN7. Reddit
 18 provides no evidence that the 23,000 anonymous defendants in *Nu Image* included xBROKEEx.
 19 Moreover, since xBROKEEx made that comment 12 years ago (in 2011), it is unlikely that xBROKEEx
 20 was one of the IP addresses included in *Nu Image, Inc. v. Does*. Nonetheless, it will be xBROKEEx’s
 21 burden of proof to disprove Plaintiffs’ position that the discovery rule is applicable. *See Beidleman*
 22 *v. Random House, Inc.*, 621 F. Supp. 2d 1130, 1132 (D. Colo. 2008) (“Defendant had the burden
 23 of proof on the issue of when a reasonably prudent person would have discovered the alleged
 24 infringement”); *Michael Grecco Prods., Inc. v. Valuwalk, LLC*, 345 F. Supp. 3d 482, 512
 25 (S.D.N.Y. 2018) (“To dispute the date on which the claims accrued in copyright cases, a defendant
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1 must produce evidence that would have been sufficient to awaken inquiry.”)

2 **II. CONCLUSION**

3 7. Accordingly, Plaintiffs pray that this Court grant its motion to compel Reddit to fully
4 respond to the subpoena and such other relief they are justly due.
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6 DATED: Kailua Kona, Hawaii, July 10, 2023.

7 Respectfully submitted,

8 **CULPEPPER IP, LLLC**

9 /s/ Kerry S. Culpepper

10 Kerry S. Culpepper

11 *Attorney for Plaintiffs*

12 *Admitted Pro Hac Vice*
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